IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 287 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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USHABEN WD/O.JASHUBHAI RANA & 3 - Appellant(s)

Versus

GENERAL MANAGER, ONGC-DELETED & 3 - Defendant(s)

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Appearance :
MR KF DALAL for Appellant(s) : 1 - 4.
DELETED for Defendant(s) : 1, 3,
MR RAJNI H MEHTA for Defendant(s) : 2, 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 23/12/2005

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

1. Ushaben- widow of Jashubhai Rana, original plaintiff No.1 and her two minor sons and daughter (at the relevant time) viz. Plaintiffs No.2, 3 & 4 have filed this appeal under Section 96 of the Code of Civil Procedure, against the judgment and decree/award dated 30/10/1985 passed by the learned Judge, City Civil Court, Ahmedabad, in Civil Suit No. 659 of 1981. By the impugned judgment, the learned Judge was pleased to partly decree the suit of the plaintiff and ordered that Defendant no.4-Oil and Natural Gas Commission (hereinafter referred to as ONGC) do pay to the plaintiffs and parents of deceased Jasubhai Rana Rs.1,07,000/- (Rupees one lakh seven thousand only) as damages together with the proportionate costs of the suit of the plaintiff and running interest at the rate of 6% p.a. from the date of pauper petition till deposit if made within four months and at the rate of 9% p.a. if made thereafter in the manner as stated hereinafter. Rest of the claim of the plaintiffs is dismissed.

2. The relevant facts giving rise to this appeal are as under, as stated in the plaint:

2.1 One Shri Jashubhai Rana (deceased) – husband of Ushaben plaintiff No.1 was an employee of the ONGC - respondent no.4. Plaintiff No.1 is the widow of deceased, while plaintiffs nos. 2, 3

and 4 were minor children of the deceased when the petition was filed before the Trial Court somewhere in 1980. It was stated that they are the only dependents of the deceased Jashubhai Rana.

2.2 It is the case of the plaintiffs in the plaint that deceased Jashubhai was working with the ONGC since 1969. Initially he commenced working as Fireman Grade-II from 6/6/1969 to 7/7/1975. Thereafter from 8/7/1975 he worked as Ringman, getting salary of Rs.900/- per month. Thereafter from 23/2/1979 to 31/10/1979, he worked as a Production Operator at Navagam- Nayaka. Deceased was appointed as Production Operator on 23/3/1979 but he was directed by the defendant to carry on the work of Ringman. It appears from the records that from 1976-77, he took up further studies in College also.

2.3 It is the case of the plaintiff that on 31.10.1979, the deceased resumed his duty at about 9:30 a.m. on well no.12 at Navagam-Nayaka, Ahmedabad Project of ONGC. That was a work of drilling the well. At about 4:30 p.m., the deceased went to the platform near which a traveling block known as KANI, weighed about 112 tones has been installed. The said KANI having a very heavy weight operates up and down and can be brought to a hault by a brake. According to the plaintiffs, when

the deceased was standing on the platform, on account of some default in the brakes of KANI it could not be stopped in time when it ought to have stopped and as the KANI could not be brought to hault by application of brake it ultimately fell upon the platform crushing some portion of platform completely, and, the deceased Jashubhai Rana who was trapped in between the platform and KANI, had succumbed to serious injuries. It is, therefore, the case of the plaintiff that the deceased Jashubhai Rana expired in the accident while performing his duty in course of his employment with a commission.

2.4 The plaintiffs' case in the plaint was that, when the plaintiff died, he was aged about 29 years only (his birth-date being 20.5.1950). As he was working in ONGC, a very good prominent Corporation, he had a very bright prospects in future in this behalf. According to the plaintiffs as stated in para 6 of the plaint, the future prospects of the deceased could be as follows:-

No.	**Year**	**Basic Pay**		**Total Pay**	**Total Months**	**Total Pay**	
1	**2**	**3**	**3A**	**4**	**5**	**6**	
1	1979-80	533	1	961-80	4	3667-20	

No.	Year	Basic Pay		Total Pay	Total Months	Total Pay	
2	1980-81	548	2	981-60	12	11779-20	
3	1981-82	563	3	1001-40	12	12016-80	
4	1982-83	578	4	1021-20	12	12254-40	
5	1983-84	598	5	1041-00	12	12492-00	
6	1984-85	16	6	1080-70(9) 100 p.m.	12	12968-40	
7	1985-86	638	7	1103-70(9) 100 p.m.	12	13244-40	Promotion
8	1986-87	658	8	1126-70(9) 100 p.m.	12	13520-40	As Junior
9	1987-88	678	9	1149-70(9) 100 p.m.	12	13746-40	Assistant
10	1988-89	698	10	1172-70(9) 100 p.m.	12	14072-40	
11	1989-90	718	11	1212-70(9) 125 p.m.	12	14552-40	
12	1990-91	738	12	2220-20(9) 100 p.m.	12	14642-40	
13	1991-92	758	13	1266-70(9) 100 pm.	12	15200-40	Promotion
+	15 years	2008	15	1266-70(9) 100 pm.	15	22806-40	As Senior Assistant

2.5 In view of the aforesaid circumstances, it is further stated that though salary of the deceased was Rs.900/- per month,

yearly income was Rs.11050/- and as the deceased was spending Rs.100/- per month on his ownself the plaintiffs claimed following amount:

1) Rs.2,88,000/- Plaintiff No.1 widow of the deceased.
2) Rs. 28,000/- Plaintiff No.2 daughter including her marriage expenses.
3) Rs.16,870/- Plaintiff No.3
4) Rs. 32,270/- Plaintiff No.4
5) Rs. 7,000/- Towards the loss of matrimonial company of plaintiff no.1 with the deceased.

Rs.3,72,340/-.

2.6 In view of the aforesaid, in the suit the plaintiffs claimed Rs.3,72,340/- with running interest at 10% per annum. The suit was filed on 23/10/1980.

2.7 On behalf of respondent, particularly ONGC, written statement had been filed on 5.9.89 at Exhibit-14. In the written statement it was stated that about Rs. 62,555/- have been paid to the heirs of the deceased. According to the defendants, the work assigned was as per duty of the deceased as production operator. There is no dispute about the fact of accident in the course of drilling on 31/10/1979 on Well No.12 at Navagam, Nayaka and

the deceased having expired in such serious accident. However, it is contended that it was a sad accident beyond the imagination and control of the defendants and the persons working on the said drilling machinery and ring. However, it is contended that there was a fault on the part of the deceased in as much as he inattentively stood on the platform and did not remain vigilant to move away from the place of accident as other employees did.

2.8 The learned trial Judge has framed issue at Exhibit-20 on issue Nos. 4, 5 and 8 which are relevant, the recorded findings are as under:

2.9 (4) Do the plaintiffs prove that the deceased Jashubhai was appointed as Production Operator, but he was directed by the defendants to do the work of Ringman inspite of his protest?
- Yes.

2.10 (5) Do the plaintiffs prove that deceased Jashubhai Rana met with the accident of the nature stated in plaint para (4) on account of some default in brake and when deceased was on his duty and in the course of performance of his duty?
-Yes.

2.11 (8) Do the plaintiffs prove that by accidental death of

deceased, they have sustained loss of Rs.3,72,340/- as stated in plaint paras 9 to 11?

- 1,07,000/-.

Oral Evidence:

2.12 Before the trial Court, on behalf of plaintiff, widow Ushaben was examined at Exhibit-52, and One Jayantibhai, elder brother of Ushaben was also examined at Exhibit-78 whereas on behalf of defendant one Ishkumar, Petroleum Engineer was examined at Exhibit-82.

2.13 From the evidence of widow Ushaben which was recorded in the year 1984 it is established that when deceased died he was 29 years old and at the time of incident one daughter Ragani was 7 years old, one son Vijaykumar was 3 years old and Ajayjumar was 4 months old and age of widow was 25 years. She has also proved that, out of Rs.900/- income, the deceased was spending Rs.100/- to meet his personal expenses and was giving Rs.800/- to her for household expenses. She has admitted that she was given job by ONGC in the year 1982. It was also stated that in the Workmen Compensation proceedings she has received Rs.32,000/- which has been stated in Exh.79 but Rs.30,000/- which has been deposited before the Workmen Compensation,

the same was not taken by her. Similar is the evidence of brother of the deceased. He has also stated that deceased died in the accident.

2.14 As regards evidence of Ishkumar Jatva Exh.82 on behalf of defendant he has stated that the accident took place on 31st October, 1979. He has described the manner in which the accident occurred. He has stated that there was no defect of the ONGC took place.

2.14A The plaintiff has produced certain documents. The details of the said documents are as under:

2.15 Documentary Evidence

Exh.54 in the year 1966-1977 Certificate for passing National Physical Efficiency Test.

Exh.55 15/4/1965 Plaintiff passed drawing elementary examination.

Exh.56 1/12/1965 Deceased passed drawing intermediate examination.

Exh.57 1/5/1966 Deceased passed intermediate drawing examination.

Exh.58 In the year 1966 Deceased passed elementary grade

drawing examination

Exh.62 18/11/1978 Deceased got interview call from ONGC.

Exh.63 3/3/1979 Interview call received from ONGC.

Exh.64 21/8/1971 Service record of the deceased.

Exh.65 29/3/1979 ONGC given permission to the deceased of passing university examination.

Exh.66 23/4/1979 Order of the Production Operator to the deceased, appointed as a Production Operator.

Exh.67 In the year 1979 A letter of ONGC to the deceased for taking charge.

Exh.68 6/4/1979 Identification carried by the defendant of the deceased.

Exhs.69,70,71 and 72 Various salary slips of the deceased for the year 1979.

Exh.73 Report of Inquiry for accident took place on 31/10/1979 while working at Navagam in the case of deceased.

Plaintiff has also relied upon Exh.97- Schedule showing qualification prescribed for direct recruitment and promotions which shows future prospects of the plaintiff in service.

Plaintiff has also produced photocopy of the fix deposit receipt of Rs. 2,100/- at Exh.76.

Exh.79 where plaintiff has admitted that the plaintiff has received Rs. 10,000/- as Benevolent fund, Rs.10,000/- as group insurance,

Rs.3,425 as Gratuity fund, Rs.6,103/- as C.P. fund, Rs.1,779/- as Leave salary encashment amount, Rs.513/- as salary for duty period for October 1979, Rs.38/- as overtime and Rs.697/- as dues in salary , In all Rs.32,555/- somewhere on 29/6/1984.

The defendant has produced a sketch of the place of accident at Exh.96,

Exh.87 – Accident report in respect of deceased.

Exh.88- Hospital report.

2.16 From the records, it appears that defendant has produced one statement of one Shri I.K.Katial, Assistant Drilling Officer taken on 15/9/1981 and also photographs in this behalf. From the record it appears that original plaintiff did not include his parents as dependents but subsequently the plaintiffs have stated that deceased parents were also dependents, and if any damages are allowed, the share of the parents may also be given. Amendment was carried out on 21/2/1985. Name of parents as dependents were included. This, in all is the documentary evidence produced by the parities in this behalf.

Trial Court Findings:

2.17 The learned trial Judge considered the aforesaid facts and circumstances of the case, so also oral as well as documentary evidence, and also relied upon the Division Bench

Judgment of this Court in the case of Bhupendrakumar Kohli v. ONGC, Sabarmati, Ahmedabad, reported in 1981 ACJ 386. The learned trial Judge has also taken into consideration the said decision which is almost identical with the present case. The learned Judge has also considered that the Division Bench has also relied upon the judgment of Hon'ble Supreme Court in the case of Shyam Sundar v. State of Rajasthan, reported in 1974 ACJ 296 and principle of Negligence from the book of Charlesworth on Negligence, 6th Edition and came to the conclusion that principle of "res ipsa loquitur" applied to this case. The learned Judge, after considering this principle, and after considering documentary as well as oral evidence of the parties, on page 26 has held that "I come to the conclusion that the relevant accident took place on account of negligence and/or default of the Commission and its relevant employees in charge of the operation, in particular Mr.Katiyal – shift in-charge". Death of Jashubhai Rana in the accident is not in dispute and ultimately the learned Judge held that plaintiff successfully proved that deceased Jashubhai while on duty met with an accident of the nature stated in the plaint on account of some default in the brake and when deceased was in the course of performance of his duty. Thus, answer to issue no.5 is in the affirmative.

2.17A The learned trial Judge has held that at the time of the incident the deceased was aged about 29 years (the date of birth being 20th May 1950). The learned trial Judge also held that the deceased's salary income was about Rs.900/- per month and he was spending Rs.100/- per month for his personal expenses and was giving Rs.800/- per month to his family or Rs.9600/- every year to his family. The learned trial Judge rounded the figure to Rs.10,000/- and therefore held that the plaintiffs were entitled to Rs.1,60,000/- in this behalf. The learned trial Judge has also taken into consideration that after the death of the deceased the Corporation has given employment to the widow of deceased and the said wife is getting Rs.900/- per month salary. In view of the same, out of Rs.1,60,000/-, 1/3rd amount was deducted and the learned trial Judge has reduced the figure to Rs.1,07,000/-. Out of said amount the learned trial Judge has apportioned the amount and awarded Rs.25,000/- to each of the minor (total Rs.75,000/-) and Rs.10,000/- to each parent (total Rs.20,000/-) and the remaining amount plus interest and costs to the widow as it was observed that the amount of Rs.32,555/- of benevolent fund etc., were given to the widow. The learned trial Judge also awarded interest at the rate of 6% p.a. from the date of pauper petition till deposit if made within four months and at the rate of 9% p.a. if the same is deposited thereafter.

Contention of the learned Advocate for the appellant-original plaintiff Mr.K.F.Dalal.

2.17B Mr.K.F. Dalal, learned advocate appearing for the appellants submitted that in this case as regards occurrence of accident in question the trial court (which we have referred earlier) has relied upon the Division Bench Judgment of this Court as well as another judgment of the Hon'ble Supreme Court in the case of Shyam Sundar v. State of Rajasthan.

2.17C He also submitted the ONGC has not filed appeal and as such the plaintiffs-appellants are now not supposed to prove the question of negligence. However, he has stated that principle regarding absolute liability has been reiterated by the Hon'ble Supreme Court in the case of M.C.Mehta and another v. Union of India and others, reported in AIR 1987 SC 1086, and in the case of Indian Council for Enviro-Legal Action etc. v. Union of India, reported in AIR 1996 SC 1446, particularly para 65 on page 1465 and also the judgment of Apex Court in the case of M.P.Electricity Board v. Sahil Kumari, reported in 2002 (1) Scale 119:2002 (2) SCC 162. He has further submitted that all these decisions have been considered by the Division Bench of this Court in the case of Executive Engineer, GEB, Jamnagar v.

Zubedbhai Ibrahim and ors., reported in 2004 (1) GLR 227, particularly para 6A, 6B, 7 and 10. Therefore the finding of the learned trial Judge regarding negligence must be upheld.

2.17D As regards compensation, the learned advocate for the appellants stated that the deceased was aged 29 years. (His birth date has been shown as 20/5/1950 and he has died on 31/10/1979). He was getting monthly salary of Rs.900/- and however his yearly income was Rs. 11050/-. So monthly income can be taken as Rs.920/- p.m. In the plaint future prospects of the deceased have been explained. He has also relied upon Exh.97 which shows the position of direct recruitment of working with the ONGC and various other certificates which show that deceased was a talented man and in fact had a bright future. The learned advocate also submitted that deceased resumed studies in the University for higher education and qualifications. If the man is young and working in a good organization, future prospects are always very bright, which should also be taken into consideration and they are sure to get higher pay-scale in future.

2.17E The learned counsel therefore submits that, this Court, while awarding compensation, should not be impressed by the last salary of the deceased which he was getting at the time of his death. For taking into consideration the future prospects,

he has relied upon the judgment of the Apex Court in the case of General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, reported in (1994) 2 SCC 176 in para 19, the Hon'ble Supreme Court has observed as under:

> "In the present case the deceased was 39 years of age. His income was Rs.1,032/- per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs.1,032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not

be in error in making a higher estimate of monthly income at Rs.2,000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents."

2.17F The learned Counsel further submitted that in the judgment of the Hon'ble Supreme Court in the case of Sarla Dixit v. Balwant Yadav, reported in 1996 ACJ 581, on the point of computation of compensation the Apex Court in para 6 on page 584, has observed as under:

"On the question of computation of proper compensation to be awarded to the appellants certain well established facts on the record of this case are required to be noted. The deceased was the only bread-winner in the family of the appellants. He was cut short in the prime period of life at the age of 27 by the accident caused by the truck driver, respondent No.2. He had put in seven years of military service by that time. He was earlier a Lieutenant in the

Army. The he was promoted to the rank of a Captain and was fully qualified for promotion to the rank of a Major at the time of his death. The certificate issued by Dy.Comdt. And OC Tps. Rampal Singh showed that the deceased had obtained the following medals during active service in various operation areas:

(a) Sena Seva Service Medal

(b) Sangram Medal

(c) Poorvi Star

(d) 25th Indept. Anniversary Medal."

2.17G Thereafter, the Hon'ble Supreme Court has referred to the case of Susamma Thomas (supra) and in same para at page 587, it is observed that:

"Adopting the same scientific yardstick as laid down in the aforesaid judgment, the computation of compensation in the present case can almost be subjected to a well settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs.1,543/- per month. Rounding it up to figure of Rs.1,500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over

7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., up to Rs.3,000/- per month had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs.1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs.3,000/- per month and dividing that figure by two. Thus, the average gross monthly income spread over his entire future career, had it been available, would work out to Rs.4,500/- divided by 2, i.e., Rs.2,200/-. Rs.2,200/- per month would have been the gross monthly average income available to the family of the deceased had he survived as a bread-winner."

2.17H The learned counsel has also relied upon the judgment of the Apex Court in the case of Lataben Wadhva v. State of Bihar, reported in 2001 (8) SCC 197, particularly para 8 at page 208, as under. The Court also referred to G.M.Kerala SRTC v. Susamma

Thomas (supra) and observed as under:

2.17H(i) “It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region, arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, “it is the overall picture that matters”, and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:

2.17H(ii) “The multiplier method is logically sound and legally well-established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.”

2.17I The Hon'ble Court further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability in the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained the earlier view of the Supreme Court on the point. After considering a series of English

decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be consumed up over the period for which the dependency is expected to last.

2.17J In aforesaid judgment the Hon'ble Supreme Court in the case of Lata Wadhva (supra) further observed in para 8 at page 209 which is as under:

2.17J(i) “Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way as prospective loss of earnings. The basic figure, instead of being the net earnings, is the net contribution to the support of the dependents, which would have been derived from the future income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiple has to be determined (a number of year's purchase),

which will reduce the total loss to its present value, taking into account the proved risks of rise or fall in the income."

2.18 The learned advocate for the appellants-plaintiffs has stated that, over and above all these decisions, while considering the future income, if the Corporation like defendant has a policy of promotion, or any other future avenues for promotion, then also the Court may consider that the deceased has a bright future. In support of the said contention, the learned counsel has relied upon para 6 of the plaint which we have quoted in para 2.4, and, the judgment of the Delhi High Court in the case of Kaladevi v. Ramchandra, reported in 1986 ACJ 818, particularly paragraphs 2, 3 and 5. While awarding higher amount, the Court observed that the life expectancy is 60-65 years and Third Pay Commission increased the salary scheme form 1/1/1973, and in view of the same, the Court fix higher future salary and Court already visualize an normal increment may be given to him. The said judgment has been considered by the Hon'ble Apex Court in the case of New India Insurance Co. Ltd. v. Kala Devi 1996 ACJ 17. While confirming the judgment of the Delhi High Court, the Apex Court has observed as under:

2.18(i) "The High Court, taking into account the revision of pay scales by the Third Pay Commission, awarded a sum of

Rs.,1,25,000/- as compensation. The contention of the learned counsel for the appellant is that the High Court had allowed the application of the claimants for enhancement of compensation on the basis of Third Pay Commission Report without affording an opportunity of being heard to the appellant. But it may be noted that the appellant had filed an appeal against the order allowing the application of the claimants of r enhancement of the claim on the basis of the report of the Third Pay Commission and the said appeal was dismissed by the High Court. Having regard to the revised pay scale of the post held by the deceased, his age and longevity of life as well as all other facts and circumstances of the case, we do not find any justification to interfere with the quantum of compensation awarded by the High Court. The appeal is, therefore dismissed. There shall, however, be no order as to costs."

2.19 As regards future income is concerned, we also rely upon the judgment in the case of Gujarat State Road Transport Corporation v. Kamlaben Valjibhai Vora decided by the Division Bench of this Court (Coram: J.N.Bhatt and K.M.Mehta, JJ.), reported in 2001(3) GLR 2528. In that case, the Division Bench of this Court has also explained the aforesaid ratio in para 23 at page 2540, 2541 and 2542. As regards future income is concerned, in para 44 at page 2552, the Division Bench has

discussed the matter. In para 45 at page 2553, the Division Bench has considered the case of G.M., K.S.R.T.C. Corpo. v. Susamma Thomas reported in AIR 1994 SC 1631 and thereafter considered the case of Sarla Dixit v. Balwant Yadav reported in AIR 1996 SC 1274 and then also relied upon the Division Bench judgment of this Court in the case of Urmilla Pandey v. Khalil Ahmad reported in AIR 1994 SC 2405. The Division Bench has also considered earlier Division Bench judgment in the case of Smt.Rafia Sultan wd/o Mirza Sultan Ali Baig and others Vs. Oil and Natural Gas Commission reported in 1985(2) GLR 1315 where the deceased had died at the age of 27 and future income was taken as almost double of the last earning amount. At page 2556, the Division Bench has observed as under:

2.19A "In our view, this Court has to award just compensation. Just compensation means appropriate, equitable or proper. It signifies that the commission amount should be so assessed as to make provision for the legal representatives to receive or earn such pecuniary benefits as they could have obtained from the deceased if he had lived his normal life. Therefore, the compensation to be assessed which can be termed 'just' as contemplated by Sec.110B (Old Act) now Section 168(1) (New Act) of the Act, should be such that if the same is prudently invested in some Scheduled Bank, it would earn interest which

would be equal to the pecuniary benefit which had been available to the legal representatives from the deceased had he not died due to accident which resulted from the negligent use of the motor vehicle. The earning capacity of the deceased, normal expectancy of his life, status of his family and the estimate of the financial assistance which he could be expected to give to his legal representatives, had he lived normal age, are some of the relevant factors which can render assistance in the determination of a fair or just compensation."

2.19B And in para 46 at page 2557, the Division Bench has further observed as under:

> "In view of the judgment of the Apex Court in the case of G.M., K.S.R.T.C. Corpo. Susamma Thomas (supra), Sarla Dixit v. Balwant Yadav (supra), and Division Bench of this Court in the case of Smt. Rafia Sultan widow of Mirza Sultan Ali Baig and others Vs. O.N.G.C. (supra), in our view while fixing the compensation the Court must see not only the income of the deceased at the time of his death, but the Court may arrive at notional potential income of deceased in future, after considering earning capacity of the deceased, normal expectancy of life, his education, nature of service, status of his family and estimate of the financial assistance which would have been expected to give his

legal representatives, had he lived normal age. After considering all these aspects, the Tribunal must come to a future notional prospective income. After arriving that the Tribunal must take means of the income of the deceased at the time of his death and future income and that should be considered for awarding compensation, after considering necessary multiplier in this behalf."

2.19C We also rely upon the judgment of Ritaben Vs. Ahmedabad Municipal Transport Services reported in 2000 ACJ 153, United India Insurance Co.Ltd. Vs. Chandulal Gokaldas Mehta (Decd.) through Sunilbhai C.Mehta and others reported in 2003(3) GLR 2386, particularly para 9. We may also refer to the another case of Maniben S.Pandya Vs. Shashikant P.Shrigalor reported in 2004(3) GLR 1878, where even the age of 35 years, the multiplier of 17 was adopted instead of 15 in para 8. (Judgment of Division Bench of this Court (Coram: Hon'ble Chief Justice Bhawani Singh and H.K.Rathod, J.).

Finding & Conclusions:

2.20 Even birth may not be as certain as death, for you know not whether a person is going to be born at all, but you know that every person that is born is going to die, after all. The inevitability of death notwithstanding, nothing brings as much

sorrow as death does. And it if occurs through an accident (i.e., not due to natural causes), its poignancy is all the more acute.

2.20A There has been a conscious response in all civilized countries to bring reparation in monetary terms for death due to accidents to persons dependent on the deceased.

2.20B Measure of damages: Loss of dependency:

2.20C There can be no uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. Some conjecture is also involved. The loss of dependency and its estimate resolves to an extent this prevarication. It is the loss of any pecuniary benefit, which the claimant is expected to receive from the continuation of life.

2.20D As far as loss of estate is concerned, under this head, which is provided for under Section 2 of the Fatal Accident Act, will lay the claims for loss of expectation of life and the economic loss sustained by the estate of the deceased. Expectation of life is not the prospect of mere length of life, but the prospect of predominantly happy life.

2.20E In view of the aforesaid facts and circumstances of the case that the deceased was aged 29 years and he was serving in ONGC and he was a talented man. He had also started studying in University for higher studies also. In view of the judgments of the Apex Court in the case of Susamma Thomas (supra), Sarla Dixit (supra), Lataben Wadhva (supra) and also judgment in Kala Devi (supra) and judgments of this Court in the case Kamlaben Valjibhai Vora, Smt.Rafia Sultana and also other judgments, we are of the view that, we should not take last monthly income of deceased as Rs.920/-, but we must take his future prospects, and we can reasonably come to the conclusion that, in future the deceased could get Rs.1840/- i.e., double the amount of his present salary.

2.21 What multiplier is to be applied?

2.21A Now the next question is regarding what multiplier is to be applied. In this behalf, we have considered the Division Bench Judgment in the case of Mulji Harijan v. United India Insurance, reported in 1982 (1) GLR 756, which has been confirmed by the Hon'ble Apex Court in the case of General Manger, Kerala State Road Transport Corporation v. Susamma Thomas and another judgment of Hon'ble Apex Court in the case of U.P. State Road Transport Corporation and ors. v. Trilok Chandra and others.

2.21B In this connection, we also rely upon the judgment of the Hon'ble Apex Court in the case of U.P.State Road Transport Corporation and others v. Trilok Chandra and others, reported in 1996 (3) GLR 136. In para 18, the Hon'ble Apex Court has observed like this.

> “To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the Courts can go by ready-reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies' case.”

2.21C As regards multiplier is concerned, the Hon'ble Supreme Court in the recent judgment in the case of Manju Devi, reported in 2005 ACJ 99, relying upon the case of UP State Road Transport Corporation Vs. Trilok Chandra reported in 1996 ACJ 831 (SC), in para 2 the Hon'ble Supreme Court has followed the same at page 100 which is as under:

> "In the case of UP State Road Transport Corpo. vs. Trilok Chandra, reported in 1996 ACJ 831(SC), it has been held by this Court that there should be no departure from the multiplier method on the ground that payment being made is just compensation. It has been held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainty to awards made all over the country. In view of this authority, it will have to be held that the award of compensation had to be made by the multiplier method."

2.21D In view of the aforesaid discussion and settled law and taking into consideration that the deceased died at a young age of 29 years, we would apply the multiplier of 18.

2.21E Now we have to fix the compensation. From the evidence, it was stated that, though his monthly income was shown as Rs.900/- but his yearly income was Rs.11,050/-. So we take monthly income as Rs.920/-. He was spending Rs.100/- p.m., on his own expenses that was in his evidence and which has not been challenged by ONGC in this behalf. On the basis of the same, the amount of compensation payable to the claimants is computed thus:

Rs.920 x 2 = Rs.1840 (double of monthly salary) + Rs.920 (add one month's salary) / divided by 2 = Rs.1380/- (deducting Rs.100/- which he used to spend for himself) comes to Rs.1280/- x 12 = Rs.15,360/- (i.e., yearly income) x 18 (multiplier as our decision) comes to Rs.2,76,480/- + Rs.15,000/- (by way of loss of assets) + Rs.2000/- under heads of pain, shock etc.) total comes to Rs.2,93,480/-.

(Re: Judgment in the case of Nasimbanu Wd/o Sirajuddin Amruddin Kazi Vs. Ramjibhai Bachubhai Ahir reported in 2005(3) GCD 2372 (Guj.) para 12 page 2383).

2.22 Whether amount of salary given to wife can be deducted from the compensation amount?

2.22A The next thing we have to consider is that whether the learned Judge was right in making deduction from the compensation amount on the ground that the wife was offered

employment.

2.22B The learned advocate for the appellants has stated that said approach of the learned trial Judge is incorrect in the eye of law. It is no doubt true that the defendant Corporation has given job to the wife of the deceased and shown good gesture and we appreciate the same but that cannot be a relevant factor for deducting the amount of compensation. In support of the same, he has relied upon the judgment of the Rajasthan High Court in the case of Sudarshan Puri reported in 1983 ACJ 489 at para 15 at page 496 in which the Court observed as under:

> "The meager amount which the widow, Smt. Sudershan Puri has been able to obtain as wages for the services rendered by her as a clerk can hardly be taken into consideration, while deciding the question of loss caused to the dependents of Shri Puri on account of his untimely death resulting from the accident. Merely because Smt. Sudarshan Puri could get a paltry job as a L.D.C., is little compensation and could hardly be considered as a solace to the family which consisted of five sons and a daughter besides Smt. Puri and her earnings in return for work done by her cannot be adjusted against the value of the dependency, which amount she and her children would

have obtained out of the earnings of Shri Puri, in case the accident would not have taken place."

2.22C The learned counsel has also relied upon the judgment in the case of Nirmala Sharma and others v. Raja Ram of Delhi High Court, reported in 1982 ACJ 143, particularly para 14 at page 152 which is as under:

"As regards the lumpsum payment, no deduction should be allowed on this account, a while calculating the compensation, no allowance has been made for the increments from 1972 to 1981 which the deceased would have earned during his service. The widow of the deceased got employment with D.E.S.U., after the accident as a clerk at Rs.230/- per month. The counsel for the respondents says that her income should be deducted from the compensation payable to her. There is no pleading in the written statement. Moreover if the heir has joined service her salary cannot be taken into consideration or deducted from the amount of compensation payable to her."

2.22D The learned counsel for the respondent has pointed out that in the case of Etikala Varalaxmi and others v. General Manager, Andhra Pradesh State Road Transport Corporation of

the Andhra Pradesh High Court, reported in 88 ACC 483, the Court has taken contrary view.

2.22E We have considered the judgment of the learned trial Judge as well as judgment of Rajasthan High Court and Delhi High Court. We have also considered the contrary judgment of Andhra Pradesh High Court. However, while considering the amount of compensation, the fact that wife was given a job by ONGC cannot be considered for deducting the compensation. In our opinion while the deceased was serving he was getting salary for the work done, after his death his wife now is working and is getting the salary for the work done by her. Whatever the salary wife is receiving is on strength of the work done by her. It is not gratuitous payment nor is ex-gratia payment. It is not an assistance provided to the family. Policy of compassionate appointment can't be used as a sword to slash the compensation amount. The said finding of the learned trial Judge that the said amount is deductable from the compensation is erroneous, unjustified and unreasonable in the facts and circumstances of the case. Moreover, we have gone through the judgment of the Rajasthan High Court, Delhi High Court. We agree with the view of the same. We respectfully disagree with the view taken by the Andhra Pradesh High Court.

2.22F For the reasons aforesaid and in facts and circumstances of the case, the learned trial Judge was unjustified in making a deduction of one third amount from the compensation amount. The approach is erroneous, unjustified and contrary to the provisions of law. The said finding deserves to be set aside and is accordingly set aside. We hold that no deductions could be made from the ascertained amount of compensation.

2.23 Whether the amount payable under provisions of Workmen Compensation Act can be deducted from the amount of compensation?

2.23A Learned counsel for the appellant submitted that any amount payable under the provisions of the Workmen's Compensation Act, 1923 (Central Act 8 of 1923) to the dependants/successors of the deceased workman cannot be deducted from any amount payable to the said successors. For this contention, he has relied upon the Division Bench judgment of this Court (Hon'ble the Chief Justice & Hon'ble Mr.Justice H.K.Rathod) in the matter of Nasimbanu, Wd/o Sirajuddin Amruddin Kazi Vs. Ramjibhai Bachubhai Ahir, reported in 2005(3) GCD 2372 (Guj).

2.23B We have gone through the said judgment. Short

summary of facts of the said case was that sirajuddin Amruddin Kazi, the deceased was a driver of a tanker belonging to Kavina Transport Company owned by Ramjibhai Hirabhai Ahir and the said truck was insured with New India Assurance Company Ltd. The accident took place on 23.12.1987 when the deceased was going from Ahmedabad to Vadodara and the offending vehicle-truck bearing Registration no.GQY 4478 driven by Ramjibhai Bachubhai Ahir dashed against the tanker driven by Sirajuddin A.Kazi, as a result of which the deceased died leaving behind the plaintiffs/claimants. In the said matter, a claim for compensation of Rs.3,50,000/- with interest was made. The trial court, after recording evidence of parties, held that the claimants/plaintiffs before it were entitled to compensation of Rs.2,12,000/- with interest at the rate of 12%. Against the said award, both the parties filed appeals. The claimants sought further compensation, while the Insurance Company prayed for setting aside of the award. A question arose in the said matter that the compensation paid by the Commissioner, Workmen's Compensation, under the Workmen's Compensation Act, could be deducted from the total amount found awardable under the provisions of the Motor Vehicles Act. The Division Bench of this Court observed that the amount paid by the master to the successors/dependants of the workman could not be deducted. Placing reliance upon the said finding recorded by the Division Bench, it is sought to be

strenuously argued that the amount which may be received or is receivable by the claimants/plaintiffs cannot be deducted from the amount payable to the plaintiffs.

2.23C In our considered opinion, the said judgment in the matter of Nasimbanu (supra) was on a particular facts of the case. There, the liability of the master arose under the Workmen's Compensation Act because of the relationship of master and servant and the statutory liability fixed under the provisions of the Workmen's Compensation Act. If a workman dies in discharge of his duties or the accident occurs at the time when the workman is discharging his duties, then, irrespective of the insurance, the liability of the master is absolute under the Workmen's Compensation Act. In a case, where a person meets with an accident and third party is held liable to pay compensation, then, any amount paid by the master who is not a party to the Motor Vehicles Act proceedings, cannot be deducted nor benefit of the payment made by the master to the employee could be given to a third party, namely, to the driver, the owner or the insurance company of the offending vehicle.

2.23D In the present matter, the liability of the master to some extent under the provisions of the Workmen's Compensation Act arises because of the death of the deceased who was at the time

of the accident discharging his duties. The compensation was paid by the master because of the relationship of master and servant and even in this suit, the plaintiffs are claiming compensation on the relationship of master and servant, but with a further submission that the master or his other officers or employees were negligent and as a result of the negligence, the accident occurred and the deceased lost his life. The judgment in the matter of Nasimbanu would not apply to the facts of the present case. We must also record that the said judgment in the matter of Nasimbanu was under the provisions of the Motor Vehicles Act, while present is a case under the common law.

2.24 The learned advocate for the respondent has invited our attention to the fact that, in the written statement, it has been stated that about Rs.62,555/- has been paid to the heirs of the deceased. Whereas, on the evidence on record, at Exh.79, the plaintiff has received Rs.10,000/- as Benevolent Fund, Rs.10,000/- as Group Insurance, Rs.3,425 as Gratuity Fund, Rs.6,103/- as C.P. Fund, Rs.1,779/- as Leave Salary Encashment amount, Rs.513/- as salary for duty period for October 1979, Rs.38/- as overtime and Rs.697/- as dues in salary , in all Rs. 32555/-.

2.25 From the record, it appears that amount of Rs.30,000/-

has been deposited by the respondent in the Court of Workman Compensation. The same has not been remitted by the Court to the original plaintiffs. We hereby direct the Workman Compensation Court to remit the said amount of Rs.30,000/- with interest till to-day to the original plaintiffs.

2.25A The learned Counsel for the respondent stated that whatever amount which this Court direct the authority of Workmen Compensation to pay to the plaintiff must be deducted from the total amount awarded by this Court to the plaintiff.

2.25B In support of the same, the learned counsel has relied upon the Division Bench judgment of this Court in the case of Jasuben wd/o Devchandbhai Parmar vs. Gujarat Electricity Board reported in 1999-II-Labour Law Journal page 446, particularly in para 13 at page 470 the Division Bench has considered the provisions of the Workman Compensation Act, and in para 17 at page 476 the Division Bench has stated that, “Admittedly, the appellants have withdrawn a sum of Rs.31,000/- deposited by the respondent No.1 and therefore that amount will have to be deducted while determining actual amount payable to the appellants as damages.” In view of the same, we are deducting the amount.

2.25C In view of the Division Bench judgment in the case of Jasuben (supra), we are of the view that the amount now to be paid by Workmen Compensation Court deserves to be deducted from the total amount of compensation as decided aforesaid. Let sum of Rs.30,000/- now to be paid by Workmen Compensation Court be deducted from the afore-referred amount of Rs.2,93,480/-. The plaintiffs are held entitled to Rs.2,63,480/- amount of compensation which we are awarding in this behalf.

3. In view of the discussion aforesaid, the appeal is partly allowed. The finding of the learned trial Judge on issue no.5 i.e. plaintiffs proved that deceased Jashubhai met with an accident of nature stated in the plaint on account of some default in brake when deceased was on his duty and in the course of performance of his duty, the said finding is confirmed, as given by the learned trial court on the ground that ONGC has not filed any appeal or Cross objections in this case and also for the reasons stated in our judgment.

4. As regards compensation is concerned, we have already indicated that total amount of compensation payable by the ONGC is Rs.2,63,480/-. Regarding the finding of the learned trial Judge that, whatever the amount of salary which was given to his wife, the same should be deducted from the total amount of

compensation given to the plaintiff, the same is not correct and legal and the finding is quashed and set aside. We hereby further direct that the findings relating to apportionment of the amount and interest shall stand confirmed.

5. As per our calculation, the plaintiffs are entitled to total amount of compensation Rs.2,93,480/-, and we have already directed Workmen Compensation Authority that Rs.30,000/- which has been deposited by the tribunal in the Workmen Compensation that Rs.30,000/- + whatever interest accrued thereon, the same may be remitted to the plaintiffs. Thus, the plaintiffs are entitled to compensation of Rs.2,93,480/- minus Rs.30,000/- which we direct the tribunal to pay directly to the plaintiffs.

6. In the result, the appeal is partly allowed with following directions:

(i) The finding of the learned trial Judge that plaintiffs proved that deceased Jashubhai Rana met with an accident of the nature stated in plaint para 4 on account of some default in brake and when deceased was on his duty and in the course of performance of his duty is upheld.

(ii) The finding of the learned trial Judge that amount of salary which was given to wife can be deducted from the

compensation given to the deceased, in our view, the amount of salary given to the wife cannot be deducted from the compensation given to the deceased, the said finding of the learned trial Judge is quashed and set aside.

(iii) The finding of the learned trial Judge that plaintiffs are entitled to the extent of loss of only Rs.1,07,000/- is quashed and set aside, and in stead of that, the plaintiffs are entitled to total compensation of Rs.2,93,480/- minus Rs.30,000/- which has been deposited by ONGC before the Workmen Compensation Authority i.e. Rs.2,93,480/- minus Rs.30,000/- = Rs.2,63,480/- (Rupees Two Lacs Sixty Three Thousand Four Hundred Eighty Only).

(iv) The Workmen Compensation Authority are directed to remit Rs.30,000/- plus whatever interest accrued thereon to the original plaintiffs-appellants herein on producing the copy of this order immediately after due verification.

(v) The decree and award of the learned trial Judge dated 30th October, 1985, in Civil Suit No.659 of 1981 is partly set aside and appeal is partly allowed. Decree be drawn accordingly. To that extent the appeal is disposed of with no order as to costs.

(R.S. Garg, J.) (K.M. Mehta, J.)

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